

# **CITY OF BEDFORD**

**Bedford, Virginia**

## **Regular Council Meeting**

### **A G E N D A**

**March 28, 2006**

**7:30 p.m.**

#### **Administrative**

Approval of Minutes  
Report of City Manager  
Council Comments  
Report of Committees  
Revisions to Agenda

#### **Public Hearings**

1-P/CD-4-3-3-3-28                      Consideration of amending Article XIV (Fees) – Land Development Regulations

#### **Consent Agenda**

2-P/CD-2-1-1-3-28                      Appointment of Members – Local Building Code Board of Appeals (roll call)

3-REC-1-5-3-28                      Appointment of Members – Recreation Advisory Committee (roll call)

#### **Old Business**

#### **New Business**

4-FIN-2-25-3-28                      Presentation - Bedford American Red Cross

5-FIN-2-25-3-28                      Presentation - Bedford Area Chamber of Commerce

6-IN-2-25-3-28                      Presentation - Bedford Area YMCA

7-FIN-2-25-3-28                      Presentation - Bedford City/County Museum

8-FIN-2-25-3-28                      Presentation – Bedford Habitat for Humanity, Inc.

9-FIN-2-25-3-28                      Presentation - Bedford Lifesaving and First Aid Crew

10-FIN-2-25-3-28                      Presentation - Bedford Ride

11-FIN-2-24-3-28                      Presentation – Blue Ridge Legal Services, Inc.

12-P/CD-4-3-3-3-28                      Ordinance – amending Article XIV (Fees) – Land Development Regulations (roll call)

13-PW-6-1-3-28                      Resolution – Approving Execution of an Agreement Vacating Certain Alleys (roll call)

14-ELEC-3-28                      Power Purchase Agreement



## **PUBLIC HEARING NOTICE**

Notice is hereby given of a public hearing to be held by the Planning Commission at 5:30 p.m. on Thursday, March 2, 2006 and by the City Council at 7:30 p.m. on Tuesday, March 28, 2006 at the City Municipal Building, Council Hall, 215 East Main Street for the purpose of:

- Consideration of amending Article XIV (Fees) of the City of Bedford Land Development Regulations.

Information regarding this request is on file in the office of Planning & Community Development.

Anyone who is in favor of or opposed to the requests will have an opportunity to express his/her views at this hearing.

Commission  
Bedford

By the Authority of the Planning  
and the City Council of the City of

Publish:      Bedford Bulletin  
                 February 15, 2006  
                 February 22, 2006

**CITY OF BEDFORD, VIRGINIA  
CITY COUNCIL  
ACTION FORM**

**ITEM:** Consent Agenda

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**DATE OF COUNCIL MEETING:** March 28, 2006

**DATE:** March 17, 2006

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**PRESENTATION:**

Appointment of Members– Local Building Code Board of Appeals

The terms of Mr. Billy Hackworth and Mr. Jerry Brown on the Local Building Code Board of Appeals expires on June 11, 2006. They have expressed a willingness to serve another term on the Board, if reappointed by Council. The vacancies have been advertised in the local newspaper and no other citizens have volunteered to serve.

**ACTION REQUESTED:**

Council is requested to reappoint Mr. Billy Hackworth and Mr. Jerry Brown to each serve a five-year term on the Local Building Code Board of Appeals, said terms to expire June 11, 2011.

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DATE:_____	FLOOD	YES	NO	OTHER	CITY ATTY.	ROUTING	
	HUBBARD	( )	( )	( )	( )	HR	( )
APPROVED ( )	MESSIER	( )	( )	( )	CITY TREAS.	PKS/REC/CEM	( )
DENIED ( )	PADGETT	( )	( )	( )	COMM.DEV.	POLICE	( )
DEFERRED TO:	STANLEY	( )	( )	( )	COMM.REV.	PUBLIC WKS.	( )
_____	THARP	( )	( )	( )	ELECTRIC	SEWER	( )
	WANDREI	( )	( )	( )	ENGINEERING	WATER	( )
		( )	( )	( )	FINANCE	I.T.	( )

PLANNING AND COMMUNITY DEVELOPMENT

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TUESDAY, FEBRUARY 28, 2006

Subject: Council Appointment  
Local Building Code Board of Appeals

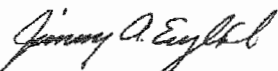
To all concerned:


Mr. Billy T. Hackworth has agreed and would like to serve another term on our Local Building Code Board of Appeals. His contact information is as follows:

Mr. Billy T Hackworth  
1110 Pinecrest Ave  
Bedford VA 24523

Your favorable approval is appreciated. Please let me know if I may be of further assistance.

Very truly yours,

  
Jimmy A. English, CBO

cc: Warner; Hackworth;  File

PLANNING AND COMMUNITY DEVELOPMENT

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TUESDAY, FEBRUARY 28, 2006

Subject: Council Appointment  
Local Building Code Board of Appeals

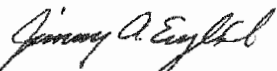
To all concerned:


Mr. Jerry Brown has agreed and would like to serve another term on our Local Building Code Board of Appeals. His contact information is as follows:

Mr. Jerry Brown  
Browns Construction Company  
730 Industrial Ave  
Bedford VA 24523

Your favorable approval is appreciated. Please let me know if I may be of further assistance.

Very truly yours,

  
Jimmy A. English, CBO

cc: Warner, Brown, 

**CITY OF BEDFORD, VIRGINIA  
CITY COUNCIL  
ACTION FORM**

**ITEM:** Consent Agenda

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**DATE OF COUNCIL MEETING:** March 28, 2006

**DATE:** March 20, 2006

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**PRESENTATION:**

Appointment of Members - Recreation Advisory Committee

The terms of Ms. Charlene McFall, and Mr. Raymond Arrington on the Recreation Advisory Committee will expire June 30, 2006. Both have indicated they would be willing to serve another term if reappointed by Council. Mr. Jerome Battle has also expressed an interest in serving on the committee. No other citizens have volunteered to serve.

**ACTION REQUESTED:**

City Council is requested to reappoint Ms. Charlene McFall and Mr. Raymond Arrington to serve three-year terms on the Recreation Advisory Committee, said terms to expire June 30, 2009, and appoint Mr. Jerome Battle to the Committee, said term to expire June 30, 2009.

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		YES	NO	OTHER	<u>ROUTING</u>		
DATE:_____	FLOOD	( )	( )	( )	CITY ATTY.	( )	HR ( )
	HUBBARD	( )	( )	( )	CITY TREAS.	( )	PKS/REC/CEM ( )
APPROVED ( )	MESSIER	( )	( )	( )	COMM.DEV.	( )	POLICE ( )
DENIED ( )	PADGETT	( )	( )	( )	COMM.REV.	( )	PUBLIC WKS. ( )
DEFERRED TO:	STANLEY	( )	( )	( )	ELECTRIC	( )	SEWER ( )
_____	THARP	( )	( )	( )	ENGINEERING	( )	WATER ( )
	WANDREI	( )	( )	( )	FINANCE	( )	I.T. ( )
					FIRE DEPT.	( )	OTHER:_____

February 27, 2006

City of Bedford  
C/O City Manager  
P. O. Box 807  
Bedford, VA 24523

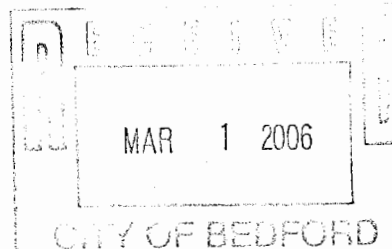
Dear Sir,

I, Charlene D. McFall request to be reinstated to another term as a member of the City of Bedford Recreation Advisory Board. I look forward to working and serving on the board for the support and betterment of our City of Bedford Parks and Recreation programs.

Respectfully,



Charlene D. McFall



February 27, 2006

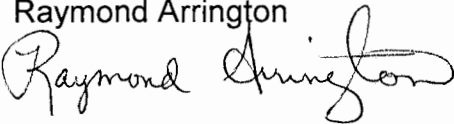
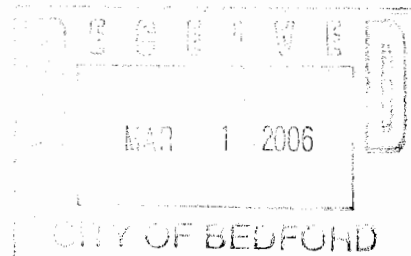
City of Bedford  
C/O City Manager  
P. O. Box 807  
Bedford, VA 24523

Dear Sir,

I, Raymond Arrington, request to be reinstated to another term as a member of the City of Bedford Recreation Advisory Board. I look forward to working and serving on the board for the support and betterment of our City of Bedford Parks and Recreation programs.

Respectfully,

Raymond Arrington

A handwritten signature in black ink that reads "Raymond Arrington". The signature is fluid and cursive, with the first name "Raymond" and last name "Arrington" clearly legible.



**Jerome A. Battle**  
1739 Longwood Ave  
Bedford, VA 24523  
(434) 941-6368

**Attention City Manager, Jack Gross**  
City of Bedford  
P.O. Box 807  
Bedford, VA 24523

May 27, 2006

Mr. Gross,

My name is Jerome A. Battle and I reside in the city of Bedford. I've been a citizen of Bedford City for over 25 years and an active participant of the Bedford City Parks and Recreation as a player, a coach, a spectator, a concerned citizen and a parent. It is now my desire to be a part of the Bedford City Parks and Recreation Advisory Board and I'm writing this correspondence asking for consideration for the next available seat on that advisory board.

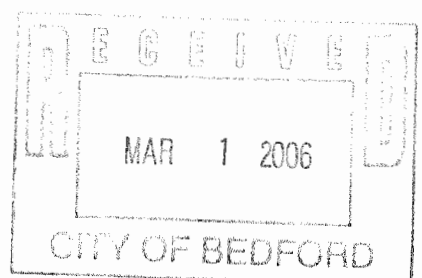
Thank you for your time and consideration.

Sincerely,

Jerome A. Battle

COPIES TO COUNCIL

3/1/06



**CITY OF BEDFORD, VIRGINIA  
CITY COUNCIL  
ACTION FORM**

**ITEM:** Ordinance - amending Article XIV (Fees) - Land Development Regulations

**DATE OF COUNCIL MEETING:** March 28, 2006

**DATE:** March 16, 2006

**PRESENTATION:**

A public hearing will be held to consider amendment of Article XIV of the City of Bedford Land Development Regulations. The amendment would restructure the fees associated with administrative actions brought before the Planning Commission and City Council. In addition to eliminating fees that are functionally obsolete, the amendment would also pass along the costs of advertising when required for public hearings as well as fees for recording documents with the Circuit Court Clerk.

The Planning Commission met on Thursday, March 2, 2006, and recommends City Council amend Article XIV of the City of Bedford Land Development Regulations.

**ACTION REQUESTED:**

Following a public hearing, Council is requested to adopt the attached ordinance recommended by the Planning Commission.

		YES	NO	OTHER	ROUTING	
DATE: _____	FLOOD	( )	( )	( )	CITY ATTY.	( ) HR ( )
	HUBBARD	( )	( )	( )	CITY TREAS.	( ) IT ( )
APPROVED ( )	MESSIER	( )	( )	( )	COMM.DEV.	( ) PKS/REC/CEM ( )
DENIED ( )	PADGETT	( )	( )	( )	COMM.REV.	( ) POLICE. ( )
DEFERRED TO: STANLEY			( )	( )	( ) ELECTRIC	( ) PUBLIC WKS
( )						
_____	THARP	( )	( )	( )	ENGINEERING ( )	SEWER ( )
	WANDREI	( )	( )	( )	FINANCE ( )	WATER ( )
					FIRE DEPT. ( )	OTHER: _____

Ordinance No. \_\_\_\_\_

**AN ORDINANCE AMENDING ARTICLE XIV OF THE CITY OF BEDFORD LAND DEVELOPMENT REGULATIONS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:**

**Section 1.** The Land Development Regulations of the City of Bedford, Virginia, are amended by replacing existing language with the following proposed language:

Article XIV

**FEES**

**1401. General**

- a. A minimum fee of \$100 plus \$5.00 per lot in the proposed subdivision, shall be submitted to the Zoning Administrator at the time of submission of the Final Plat to cover the cost of administration of this Ordinance. [Amended December 11, 2001]
- b. A sign permit fee of \$25.00 for residential signs and \$50.00 for commercial signs shall be submitted with the sign permit application. [Amended December 11, 2001]
- c. Each request for a conditional use, zoning appeal, variance, zoning text amendment, or zoning map amendment, shall be accompanied by a fee of \$150.00.
- d. Request for vacation of plats shall be accompanied by a fee of \$100.00.
- e. Where state law or local ordinance requires publication of notices, the applicant is also responsible for reimbursement of all expenses related to such publication paid by the City. Prior to the date of the hearing for which the notice was published, the applicant shall reimburse the City for the actual costs of publication. In the event such reimbursement has not been paid, the public hearing will be continued until such reimbursement has been received. [Amended March 28, 2006]
- f. In cases where plats or ordinances are required to be recorded in the Circuit Court Clerk's office, the applicant shall pay all such recording costs or reimburse any such costs that are paid by the City. [Amended March 28, 2006]
- g. The following fee shall be charged for a zoning permit:

Residential permits

New Home	\$40
Addition/Expansion	\$40
Pools/Decks/Garages/Carports	\$40
Accessory Buildings	\$40
Grading/Demolition	\$25
Renovations (no expansion)	\$25

Commercial permits

Projects up to 1,000 s.f.	\$75
Projects over 1,000 s.f.	\$100

[Amended December 11, 2001]

h. A fee of \$25.00 shall be charged for a copy of these regulations.

**Section 2.** This ordinance should be effective upon enactment.

To: Mayor Messier and City Council Members  
From: Bart Warner, Director of Planning & Community Development  
Date: March 3, 2006  
Re: Recommendation of Planning Commission

On March 2, 2006, the Planning Commission held a regularly scheduled meeting for the following purpose:

- Consideration of amending Article XIV (Fees) of the City of Bedford Land Development Regulations.

On a motion by Mr. English, seconded by Ms. Coles, with all members voting aye, the Planning Commission recommends that City Council approve amending Article XIV (Fees) of the City of Bedford Land Development Regulations.

**CITY OF BEDFORD, VIRGINIA  
CITY COUNCIL  
ACTION FORM**

**ITEM:** Resolution - Approving Execution of an Agreement Vacating Certain Alleys

**DATE OF COUNCIL MEETING:** March 28, 2006

**DATE:** March 24, 2006

**PRESENTATION:**

Bedford Ready Mix Concrete Co, Inc. is planning some expansion and renovation of its facilities on Railroad Avenue and has requested the vacation or closing of certain alleys in the area bounded by Monroe Avenue on the north, Adams Street on the east, Railroad Avenue on the south, and Judd Street on the west. The alleys were created in the 1890 Plat of Greenwood.

The alleys to be vacated are bordered entirely by property owned by Bedford Ready Mix, by Rubatex International LLC, and by a lot purchased by the City from Rubatex in 2004. Under Virginia law, such alleys can be vacated by agreement of the abutting owners and by the municipality. The land on which the vacated alleys exist then reverts to the abutting owners.

Bedford Ready Mix has provided a new plat showing the vacated alleys and the resulting lots after all old lot and alley lines have been redrawn. The new plat shows the portion of one alley which is being retained so that the City will have access to the utility pole, gives the City rights-of-way over the Bedford Ready Mix property for certain existing electric lines, and shows the combined acreage of each lot owner. The plat, in effect, cleans up many of the old property lines that were in this area.

The agreement vacating alleys and property lines has been prepared by the City Attorney together with a resolution authorizing the Mayor and Clerk to execute the agreement.

**ACTION REQUESTED:**

The City Staff recommends that Council adopt the Resolution authorizing execution of the Agreement Vacating Alleys and Property Lines.

		YES	NO	OTHER	ROUTING	
DATE: _____	FLOOD	( )	( )	( )	CITY ATTY. ( )	HR ( )
	HUBBARD	( )	( )	( )	CITY TREAS. ( )	PKS/REC/CEM ( )
APPROVED ( )	MESSIER	( )	( )	( )	COMM.DEV. ( )	POLICE ( )
DENIED ( )	PADGETT	( )	( )	( )	COMM.REV. ( )	PUBLIC WKS. ( )
DEFERRED TO: STANLEY			( )	( )	( ) ELECTRIC	( ) SEWER
( )						
_____	THARP	( )	( )	( )	ENGINEERING ( )	WATER ( )
	WANDREI	( )	( )	( )	FINANCE ( )	I.T.

**RESOLUTION APPROVING EXECUTION OF AN  
AGREEMENT VACATING CERTAIN ALLEYS IN BLOCK 8,  
PLAT OF GREENWOOD, WHICH IS BOUNDED ON THE NORTH BY MONROE  
AVENUE, ON THE EAST BY ADAMS STREET, ON THE SOUTH BY RAILROAD  
AVENUE AND ON THE WEST BY JUDD STREET**

**WHEREAS**, the land located in the City of Bedford and bounded on the north by Monroe Avenue, on the east by Adams Street, on the south by Railroad Avenue, and on the west by Judd Street was divided into fourteen lots that included two alleys running between the lots as shown on a plat of survey entitled "Plat of Greenwood," which was recorded in the Clerk's Office of the Circuit Court of Bedford County, Virginia in Deed Book 65, at page 141; and

**WHEREAS**, one alley (referred to herein as Alley "B") was shown running east and west through Block 8 from Adams Street on the east to Judd Street on the west, the alley being bordered on the north by Lots 1-8 and on the south by Lot 9, Lot 11, and the second alley was shown running from Railroad Avenue in a northerly direction between Lots 9 and 10 on the west and Lots 11, 12 and 13 to meet Alley B at its north end; and

**WHEREAS**, the City of Bedford, Bedford Ready Mix Concrete Co, Incorporated, and Rubatex International, LLC own all of the lots abutting the two alleys; and

**WHEREAS**, Bedford Ready Mix is renovating and expanding some of its facilities on its land and has requested the abandonment of all of Alley B and the northern portion of the second alley and has agreed to convey an additional easement to the City to facilitate the repair and maintenance of electric facilities that lie within the portion of the second easement being retained; and

**WHEREAS**, a new plat of survey has been prepared showing the effect of the closing of the alleys that has been requested, and the City Attorney has prepared an Agreement Vacating Alleys and Property Lines to carry into effect the requested vacation of alleys;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEDFORD:**

The Mayor and the City Clerk are hereby authorized and directed to execute for recordation the instrument of vacation closing and vacating the alleys to be recorded with the plat showing the resulting properties as more fully set forth in the said Agreement.

Prepared by  
William W. Berry, IV  
206 E. Main Street  
Bedford, Virginia 24523

Tax Map No.s: 195-5-8-1, 195-5-8-2, 195-5-8-3, 195-5-8-4, 195-5-8-5, 193-5-8-6, 195-5-8-9,  
195-5-8-10, 195-5-1

## AGREEMENT VACATING ALLEYS AND PROPERTY LINES

This Agreement Vacating Alleys and Property Lines, made and entered into this 29<sup>th</sup> day of March 2006 by and between BEDFORD READY MIX CONCRETE CO, INCORPORATED, a Virginia corporation, party of the first part (Grantor and Grantee); RUBATEX INTERNATIONAL, LLC, a Virginia limited liability company, party of the second part (Grantor and Grantee); and the CITY OF BEDFORD, VIRGINIA, a Virginia Municipal Corporation, party of the third part (Grantor and Grantee).

WHEREAS, the land located in the City of Bedford and bounded on the north by Monroe Avenue, on the east by Adams Street, on the south by Railroad Avenue, and on the west by Judd Street was divided into fourteen lots that included two alleys running between the lots as shown on a plat of survey entitled "Plat of Greenwood," which was recorded in the Clerk's Office of the Circuit Court of Bedford County, Virginia in Deed Book 65, at page 141; and

WHEREAS, one alley (referred to herein as Alley "B") was shown running east and west through Block 8 from Adams Street on the east to Judd Street on the west, the alley being bordered on the north by Lots 1-8 and on the south by Lot 9, Lot 11, and the second alley was shown running from Railroad Avenue in a northerly direction between Lots 9 and 10 on the west and Lots 11, 12 and 13 to meet Alley B at its north end; and



WHEREAS, Bedford Ready Mix Concrete Co, Incorporated (herein “Bedford Ready Mix”) owns the real estate in Block 8 which included Lots 1, 2, 3, 4, the western half of Lot 5, and Lots 9 and 10, the real estate having been conveyed to Bedford Ready Mix by J. C. McCarthy and Erma C. McCarthy by a deed dated July 1, 1957 and recorded in Deed Book 269, at page 560; and

WHEREAS, the City of Bedford, Virginia (herein “City”) owns the real estate in Block 8 consisting of the eastern half of Lot 5 and Lot 6, 7, and 8, which were part of real estate conveyed to the City by RBX Industries, Inc. by a deed dated April 7, 2004 and recorded as Instrument No. 0400005509; and

WHEREAS, Rubatex International, LLC (herein “Rubatex”) is the owner of real estate in Block 8 consisting of Lot 11 and the western parts of Lots 12, and 13 which border on the said alleys, the said real estate being referred to as “a transformer site” which was conveyed by the City of Bedford to Waltex Corporation by a deed dated November 11, 1986 and recorded in Deed Book 635, at page 170 (where the land was conveyed as Parcels 11A, 12A, 13A, 11B, and 12B as shown on a plat recorded in Deed Book 224, at page 463 and in Plat Book 5, at page 98), Waltex Corporation having conveyed the real estate to RBX-Waltex, Inc. by a deed dated December 14, 1990, and recorded in Deed Book 784, at page 793, and RBX Industries, Inc., successor to RBX-Waltex, Inc., having conveyed the real estate to Rubatex International, LLC, by a deed dated September 22, 2004 and recorded as Instrument No. 040015383; and

WHEREAS, the City, Bedford Ready Mix and Rubatex International, as owners of all lots abutting the said alleys, desire , pursuant to *Code of Virginia*

Section 15.2-2272 to close and abandon all of Alley B and the northern portion of the second alley as set forth hereinafter; and

WHEREAS, the recordation of such an agreement will vest in the respective parties fee simple title to the center line of such portions of the alleys as are thus vacated; and

WHEREAS, a plat of survey has been prepared showing the portions of the alleys that are vacated and showing the combination of the abandoned portions of the alleys with the adjoining properties, the plat being entitled "Plat Showing Proposed Concrete Plant Bedford Ready Mix Concrete Co. Inc, City of Bedford, Virginia" prepared by Hurt & Proffit, Inc, Engineering, Surveying, Planning, dated January 6, 2006, a copy of which is attached hereto;

NOW, THEREFORE, this instrument of vacation: That for and in consideration of the premises and pursuant to the provisions of the *Code of Virginia* Section 15.2-2272, the City of Bedford, Virginia, Rubatex International LLC, and Bedford Ready Mix Concrete, Co, Inc, do hereby DECLARE and AGREE to vacation of all of Alley B and to vacation of the northern portion of the second alley, being all portions of the second alley except for the 0.034 acres designated Alley A on the plat which shall continue as an open alley.

The parties do hereto further AGREE to the combination of the original parcels and the portions of the abandoned alleys, and to the vacation of interior lot lines thereby creating Parcel D, containing 0.525 acres owned by Rubatex International, Parcel C, containing 0.642 acres owned by the City, and Parcel A, containing 1.088 acres and Parcel B containing 0.764 acres owned by

Bedford Ready Mix; provided, however, pursuant to the provisions of Section 15.2-2274 the abandonment of such alleys is subject to the rights of the owners of any public utility installations, including the City, which have been previously erected therein.

For Ten Dollars (\$10.00) and other good and valuable consideration, Bedford Ready Mix Concrete, Co, Inc, does hereby GRANT and CONVEY to the City of Bedford, Virginia, (a) a right-of-way and easement over the semi-circular shaded area shown on the west side of Alley A for the purposes of obtaining access and service to certain utility installations located on the edge of Alley A to be considered part of retained Alley A having a combined acreage of 0.034 acres (See Note 14 on plat); (b) a twenty-five (25) foot wide electric line easement lying five feet on either side of the existing electric line running from Point A on Monroe Street to Point C on Railroad Avenue (See Note 13), and (c) the right to place utilities in the areas designated as proposed public utility easements (P.U.E.) on said plat.

The electric line easement and public utility easements are subject to any existing easements or rights of way, and further subject to the following conditions:

A. The facilities constructed upon the easement shall remain the property of City. The City shall have the right to inspect, rebuild, remove, repair, improve, and make such changes, alterations, additions to or extensions of its facilities within the boundaries of said easement areas as are consistent with the purposes expressed herein. All construction, maintenance,

equipment and facilities shall comply with all applicable laws, ordinances, codes, and regulations.

B. City shall restore the premises as nearly as practicable to its original condition, including reseeding or resodding of lands, removal of debris, and removal of any equipment, accessories or appurtenances not consistent with the construction, maintenance or operation of said facilities or the exercise of any rights or privileges expressed herein.

C. City shall have the right from time to time to trim and cut down and clear away any and all trees and brush and foliage now or hereafter on the strip of easement and shall have the further right from time to time to trim and cut down and clear away any trees or foliage on either side of the electric line easement which now or hereafter in the opinion of the City may be a hazard to its poles, wires or cables, by reason of the danger of falling thereon.

D. City shall have the right of ingress to and egress from said right of way easement over the remaining lands of Owner by means of roads and lanes thereon if there is such reasonably available; otherwise, by such routes as shall occasion the least damage and inconvenience to Owner; provided, however, that City shall at the election of Owner pay for or repair any injury to the land, structures, roads, fences, and other improvements of Owner caused by City, its employees, agents or contractors.

E. Owner and the successors and assigns of Owner shall have the right to use the easement areas for any purpose not inconsistent with the rights granted herein to City; provided such use does not interfere with the safe and

efficient construction, operation or maintenance of said facilities, and provided further that such use is not inconsistent with any laws, ordinances or codes pertaining to the construction, operation or maintenance of said facilities, and provided further that no buildings or other structures shall be constructed within the public utility easement areas without the permission of the City and no buildings or structures shall be built within the overhead power line easement that may interfere with the existing power lines and the City's ability to repair, maintain and replace such lines without the permission of the City (See Note 12 on the plat).

IN WITNESS WHEREOF, the City of Bedford has caused this instrument to be signed in its name and on its behalf by its Mayor and its Corporate Seal hereinto fixed, duly attested to by its City Clerk, pursuant to a resolution adopted at a regular meeting of its City Council held on March 28, 2006, and Bedford Ready Mix Concrete Co, Inc, and Rubatex International, LLC have caused this instrument to be signed on behalf of the respective companies by their officers and managers who have been duly authorized to execute such documents.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

BEDFORD READY MIX CO, INC.

By: \_\_\_\_\_  
Its President

CITY OF BEDFORD, VIRGINIA

By: \_\_\_\_\_  
E. Thomas Messier

SEAL

\_\_\_\_\_  
Teresa W. Hatcher

RUBATEX INTERNATIONAL, LLC

By: \_\_\_\_\_  
Its Manager

STATE OF VIRGINIA  
CITY OF BEDFORD, TO-WIT:

I, \_\_\_\_\_, being a Notary Public in and for the State of Virginia, at large, do hereby certify that \_\_\_\_\_, President of Bedford Ready Mix Co, Inc. whose name is signed to the foregoing Agreement of Vacation, has acknowledged the same before me this \_\_\_\_ day of March 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF VIRGINIA  
CITY OF BEDFORD, TO-WIT:

I, \_\_\_\_\_, being a Notary Public in and for the State of Virginia, at large, do hereby certify that E. Thomas Messier and Teresa W. Hatcher, Mayor of the City of Bedford and Clerk of the Council, whose names are signed to the foregoing Agreement of Vacation, have acknowledged the same before me this \_\_\_\_ day of March 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF VIRGINIA  
CITY OF BEDFORD, TO-WIT:

I, \_\_\_\_\_, being a Notary Public in and for the  
State of Virginia, at large, do hereby certify that \_\_\_\_\_,  
Manager of Rubatex International, LLC, whose name is signed to the foregoing  
Agreement of Vacation, has acknowledged the same before me this \_\_\_\_ day of  
March 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CITY OF BEDFORD, VIRGINIA  
CITY COUNCIL  
ACTION FORM**

**ITEM:** Power Purchase Agreement

**DATE OF COUNCIL MEETING:** March 28, 2006

**DATE:** March 23, 2006

**PRESENTATION:**

The City has negotiated an agreement with Holcomb Rock Company and Coleman Falls Company for the purchase of electric energy output produced by hydroelectric facilities owned by the two companies on the James River. The terms of the purchase are very favorable to the City compared to the current cost of wholesale power. Under the agreement, the City would receive approximately 3.875 megawatts of energy at a cost of \$35.30 per megawatt hour. The contract period is for five years and would be extended for consecutive one year terms.

**ACTION REQUESTED:**

City Council is requested to authorize the City Manager or the Mayor to sign the power purchase agreement with Holcomb Rock Company and Coleman Falls Company.

		YES	NO	OTHER	ROUTING	
DATE: _____	FLOOD	( )	( )	( )	CITY ATTY. ( )	HR ( )
	HUBBARD	( )	( )	( )	CITY TREAS. ( )	IT ( )
APPROVED ( )	MESSIER	( )	( )	( )	COMM.DEV. ( )	PKS/REC/CEM ( )
DENIED ( )	PADGETT	( )	( )	( )	COMM.REV. ( )	POLICE. ( )
DEFERRED TO: STANLEY			( )	( )	( ) ELECTRIC	( ) PUBLIC WKS
( )						
_____	THARP	( )	( )	( )	ENGINEERING ( )	SEWER ( )
	WANDREI	( )	( )	( )	FINANCE ( )	WATER ( )
					FIRE DEPT. ( )	OTHER: _____



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**THE CITY OF BEDFORD, VIRGINIA**

**AND**

**HOLCOMB ROCK COMPANY  
AND  
COLEMAN FALLS COMPANY**

**DATED MARCH 7, 2006**

THIS **POWER PURCHASE AGREEMENT** (the "PPA" and/or the "Agreement") is made this 7th day of March, 2006, by and between **The City of Bedford, Virginia, a municipal corporation of the Commonwealth of Virginia, acting by and through its Electric Department** ("Buyer"), and **Holcomb Rock Company** and **Coleman Falls Company** ("Sellers," as further defined in Section 1.2 below), each a Virginia Corporation with a principal place of business located at 4839 Holcomb Rock Road, Lynchburg, Virginia. Seller(s) and Buyer are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Sellers own and operate certain hydroelectric generating facilities on the James River in Amherst and Bedford Counties, Virginia, with a combined nameplate generating capability of approximately 3.875 megawatts (MW), which are collectively referred to herein as "Facilities" and are further defined below; and

WHEREAS, Sellers desire to sell to Buyer the total electric energy output from the Facilities and Buyer desires to buy the same from the Sellers;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## **Article 1 – Definitions and Rules of Interpretation**

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. In addition, the following rules of interpretation shall apply:

(A) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections or exhibits of this PPA, unless otherwise specifically indicated.

(B) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this PPA, the terms of this PPA shall take precedence.

(C) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) where the PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not

be unreasonably withheld, conditioned or delayed, and (b) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement specification or similar action shall be reasonable.

1.2 Definitions. The following terms shall have the meanings set forth herein:

“Abandonment” means the relinquishment of all possession and control of the Facilities by a Seller, other than a transfer permitted under this PPA; or a Seller’s cessation of operation of Facilities for reasons other than as expressly contemplated under this PPA.

“Affiliate” of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term “control” (including the terms “controls,” “under the control of,” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract, or otherwise.

“Business Day” means any calendar day that is not a Saturday, a Sunday or a holiday recognized by the North American Electric Reliability Council (“NERC”).

“Commercial Operation” means the period beginning on the designated operational effectiveness date of this PPA and continuing through the Term.

“Contract Energy” means the entire electrical energy output generated at the Facilities during the Term of this PPA, as delivered by Sellers to the Point of Delivery and measured at the Metering Point. The aggregate amount of Contract Energy to be delivered to Buyer annually under this PPA under average hydrologic conditions is expected to be approximately 15,000,000 kilowatt-hours (kWH).

“Day” means a calendar day.

“Electrical Interconnection Point” means the physical point at which electrical interconnection is made between the Facilities and the Buyer’s electric system.

“Electric Metering Device(s)” means all Buyer-owned meters, metering equipment, and data processing equipment used to measure, record or transmit data relating to the electric power and energy output from the Facilities.

“Emergency” means any abnormal interconnection or system condition that requires automatic or immediate manual operation to prevent or limit loss of

Buyer's system or generation supply, that could adversely affect the reliability of the Buyer's system or generation supply, that could adversely affect the reliability of any interconnected system of the Facilities, or that could otherwise pose a threat to the public.

"Environmental Contamination" means the presence of Hazardous Materials at such levels, quantities or location, or of such form of character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations such that any of the Facilities will not be available or usable for the purposes contemplated by the PPA.

"Event of Default" means an event as defined in Article 11.

"Facilities" means each of Sellers' hydroelectric generating facilities and related appurtenances, including but not limited to protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the operation and maintenance of the electric generating facilities that produce the power and energy subject to this PPA.

(A) With respect to Seller Holcomb Rock Company, "Facilities" shall include all project works licensed by FERC as Project No. 2901 and known as the Holcomb Rock Hydroelectric Project, having a nameplate generating capacity rating of approximately 1.875 MW;

(B) With respect to Seller Coleman Falls Company, "Facilities" shall include all project works exempted from licensing by FERC as Project No. 5456 and known as the Coleman Falls Hydroelectric Project, having a nameplate generating capacity rating of approximately 2.0 MW.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" means any condition at any of the Facilities that requires immediate removal of such Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms.

"Good Utility Practice(s)" means the practices, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the fuel supply and electric power generation industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental

protection, economy, and expedition. With respect to each of the Facilities, Good Utility Practice(s) include, but are not limited to, taking reasonable steps to ensure that:

(A) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet each Facility's needs;

(B) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate each of the Facilities properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(C) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to all applicable environmental laws, permits, or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and

(F) Equipment and components meet or exceed the standard of durability that is generally used to electric generation operations in the region and of the type and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at each of the Facilities under both normal and Emergency conditions.

"Government Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any local governmental authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water,

groundwater, and air, including but not limited to, any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extreme hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a “chemical substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“Metering Point” means the point at which Buyer has installed metering equipment to measure the capacity and Contract Energy generated at Sellers’ Facilities and delivered to Buyer at the Point of Delivery. The Metering Point shall be installed at Buyer’s Penn Turpin Substation, located approximately three miles from the Point of Delivery.

“Net Capability” means the maximum generating capacity, in kilowatts (kW), that the Facilities are expected to be able to produce and deliver to Buyer at the Point of Delivery, as further defined in Section 3.3 below.

“On-Peak Months” means the calendar months of June, July, August, December, January, and February.

“Operating Records” means all agreements associated with the Facilities, operating and maintenance logs, maintenance and repair contracts, operating manuals, warranties on equipment, and all documents, whether in printed or electronic format, that the Sellers use or maintain for the operation of the Facilities.

“Point of Delivery” means the electric system point at which Sellers make available to Buyer and deliver to Buyer the power and energy being provided by Seller to Buyer under this PPA, namely, the Electrical Interconnection Point connecting Sellers’ generation Facilities with Buyer’s electrical system at the Georgia Pacific environmental plant located near the intersection of Waugh Switch Road and Lee-Jackson Highway in Big Island, Virginia.

“PPA” means this Power Purchase Agreement between Sellers and Buyer, including any Exhibit(s) attached hereto.

“Replacement Power Costs” means the costs incurred by Buyer for the energy which is necessary to replace that which the Seller, in accordance with

this PPA, was required to have produced at each of the Facilities and delivered to Buyer, but failed to so provide. Replacement Power Cost is further defined as the difference in cost between the cost of power in this PPA and the cost incurred by Buyer for replacement power.

“Scheduled Outage” means a planned interruption/reduction of each of the Facilities’ generation that both (i) has been coordinated in advance with Buyer, with a mutually agreed start date and duration, and (ii) is required for inspection, or preventative or corrective maintenance.

“Sellers,” when used in the plural, shall mean both Holcomb Rock Company and Coleman Falls Company, collectively. “Seller,” when used in the singular, shall mean Holcomb Rock Company when the context refers to the Holcomb Rock Hydroelectric Project (FERC Project No. 2901); and shall mean Coleman Falls Company when the context refers to the Coleman Falls Hydroelectric Project (FERC Project No. 5456).

“Term” means the period of time during which this PPA shall remain in full force and effect in accordance with Article 2 herein.

1.3 Technical Meanings. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

## **Article 2 – Term and Termination; Renewal**

2.1 Term. This PPA shall become effective as of August 1, 2006, and shall remain in full force and effect for a term of five (5) years from the effective date, subject to any early termination or extension provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to the termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this PPA, and the indemnifications specified in this PPA.

2.2 Extension. Unless any Party gives written notice at least six (6) months prior to the scheduled termination of this PPA of that Party’s intention not to extend or renew this PPA upon its scheduled termination, this PPA shall automatically be extended for consecutive one (1) year terms under the same terms, conditions and pricing as stated herein, until such six months’ notice is duly given or until the Parties mutually agree to amend the terms of the PPA.

3.3 Termination. This PPA may be terminated prior to a scheduled termination date only as specifically provided for elsewhere in this Agreement.

## **Article 3 – Description of Facilities**

3.1 Summary Description. Sellers shall separately own, operate, and maintain the respective Facilities, which shall be, in the case of Seller Holcomb Rock Company, those Facilities described in the FERC license for the Holcomb Rock Hydroelectric Project (FERC Project No. 2901); and in the case of Seller Company, those Facilities described in the FERC Exemption from Licensing for the Coleman Falls Hydroelectric Project (FERC Project No. 5456), including any amendment(s) of such license and/or exemption. The Facilities shall also include a generation tie line, which is a 12.47-kilovolt (kV) distribution line owned by Holcomb Rock Company that interconnects both generating facilities to Buyer's electric system at the Point of Delivery at pole number 71308-23777.

3.2 Location. The generating facilities are located on the James River in Amherst and Bedford Counties near the town of Big Island, Virginia. The generation tie line extends from the hydroelectric plants to the Point of Delivery, which is located at the Georgia Pacific environmental plant located near the intersection of Waugh Switch Road and Lee-Jackson Highway in Big Island, Virginia.

3.3 Net Capability. The Net Capability of the Holcomb Rock plant is approximately 1,875 kW, and the Net Capability of the Coleman Falls plant is approximately 1,200 kW, as measured at the Point of Delivery. The expected aggregate Net Capability of the Facilities available to Buyer hereunder at the Point of Delivery during optimal hydrologic conditions is approximately 3,075 kW.

## **Article 4 – Commercial Operation**

4.1 Commercial Operation. During the term of this PPA, the Facilities shall be fully capable of reliably producing the Net Capability and Contract Energy to be provided under this PPA and delivering such capacity and energy to Buyer at the Point of Delivery. The Facilities shall be operated continuously, subject to interruption only in the event of an Emergency, a Forced Outage, a Scheduled Outage as provided for elsewhere in this Agreement, or when Good Utility Practice otherwise dictates such interruption.

## **Article 5 – Delivery, Availability Reporting, and Metering**

5.1 Delivery Arrangements. Sellers shall be responsible for all transmission and interconnection arrangements and costs required to deliver, on a firm basis, the capacity and Contract Energy from the Facilities to Buyer at the Point of Delivery. Buyer shall be responsible for all transmission, distribution and ancillary service arrangements and costs required to receive the capacity and Contract Energy at the Point of Delivery and to deliver such capacity and energy to points beyond the Point of Delivery.



5.2 Electrical Losses. Sellers shall be responsible for all electrical losses associated with delivery of the Facilities' capacity and Contract Energy to the Point of Delivery and any losses incurred in the transmission of such capacity and Contract Energy from the Point of Delivery to the Metering Point. Buyer shall be responsible for any electrical losses associated with the transmission or distribution of such capacity and Contract Energy beyond the Metering Point.

5.3 Electric Metering Devices

(A) All Electric Metering Devices used to measure the capacity and Contract Energy made available to Buyer by Sellers under this PPA and to monitor and coordinate operation of the Facilities shall be owned, installed, and maintained by Buyer. All Electric Metering Devices used to provide data for the computation of payments hereunder shall be sealed and only Buyer shall break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article. Buyer shall specify the number and type of such Electric Metering Devices, subject to the approval of Sellers. Those Electric Metering Devices that are used to measure the capacity and Contract Energy delivered to Buyer under this PPA shall be located at the Metering Point, as defined hereinabove. Buyer shall provide to Seller real time meter data.

(B) Buyer, at its own expense, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Buyer shall provide Sellers with reasonable advance notice of, and permit a representative of each Seller to witness and verify, such inspections and tests, provided, however, that Sellers shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. Upon request by a Seller, Buyer shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of each Seller to inspect or witness the testing of any Electric Metering Device, provided, however, that the requesting Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the requesting Seller, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Buyer. If requested by a Seller in writing, Buyer shall provide copies of any such inspection or testing reports to the requesting Seller.

(C) If any Electric Metering Devices are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as nearly as practicable to a condition of zero error by the Buyer and at Buyer's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy. In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one-hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

5.5 Transmission of Meter Reading Data to Sellers. Within ten (10) Business Days following the end of each calendar month, Buyer shall supply to Sellers meter data recorded by Electric Metering Device(s) measuring the amount of Contract Energy delivered at the Metering Point during said calendar month. Such meter data shall be of a type and in a form sufficient to allow Sellers to issue billing statements and invoices pursuant to Section 8.1 below.

## **Article 6 – Obligation to Sell and Purchase Capacity and Energy**

6.1 Sale and Purchase. Beginning on the effective date of this PPA, Sellers shall supply from the Facilities and sell to Buyer, and Buyer shall receive and purchase, the entire aggregate capacity and Contract Energy of the Facilities during the entire Term of this PPA. Sellers shall deliver the capacity and Contract Energy to, and make such power and energy available for receipt by Buyer at the Point of Delivery. Sellers shall not contract to sell any energy or capacity from the Facilities to any person or entity other than Buyer for the Term and Sellers acknowledge that Buyer is entitled to receive all capacity and energy from the Facilities during the Term. Seller(s) shall not curtail or interrupt deliveries of capacity and Contract Energy for economic reasons.

6.2 Title and Risk of Loss. As between the Parties, Sellers individually and collectively shall be deemed to be in control of the capacity and Contract Energy output from the Facilities up to and until delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such capacity and energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Contract Energy shall transfer from Sellers to Buyer at the Point of Delivery.

## **Article 7 – Payment Calculations**

7.1 Payment for Energy. Buyer shall compensate Sellers at a fixed rate of \$0.0345 per kilowatt-hour for all Contract Energy delivered to Buyer at the

Point of Delivery and measured at the Metering Point during the Term of this PPA. There shall be no separate payment for capacity.

## **Article 8 – Billing and Payment**

8.1 Billing Statement and Invoices. The monthly billing period shall be the calendar month. No later than ten (10) Business Days after receiving the information specified in Section 5.5 above, Sellers shall individually or collectively provide Buyer an invoice statement showing the payment amount due Sellers for the Contract Energy purchased by Buyer under this PPA during the previous calendar month billing period. The statement will show total metered energy, all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller. If Buyer disputes any amount in the received invoice statement, Buyer shall provide written notice to the applicable Seller(s) within five (5) Business Days explaining the items in the dispute and providing supporting documentation. Billing disputes shall be resolved in accordance with Section 12.6 of this PPA.

8.2 Metered Billing Data. All billing data shall be based on metered deliveries to Buyer and shall be collected by the Electric Metering Device(s) in accordance with Article 5.

8.3 Payments. Unless otherwise specified herein, payments due under this PPA shall be due and payable by electronic transfer or check not later than 30 days following Buyer's reading of the meters. If the amount due is not paid on or before the due date, interest at six percent (6%) per annum shall be charged on the unpaid balance from the due date until paid.

8.4 Billing Disputes. Buyer may dispute invoiced amounts, but shall pay to the Seller(s) at least the undisputed portion of any invoiced amounts on or before the invoice due date. To resolve any billing dispute, the applicable Parties shall use the procedures set forth in Section 12.6. When the billing dispute is resolved, any remaining owed amounts shall be paid within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 8.3. Buyer at any time may offset against any and all amounts that may be due and owed to any Seller under this PPA, any and all undisputed amounts owed by any Seller according to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 8.3

## **Article 9 – Operations and Maintenance**

### **9.1     Scheduling of Outages**

(A) At least one (1) month prior to commencement of energy deliveries under this PPA, Sellers shall provide Buyer with a schedule of expected and/or Scheduled Outages for the Facilities (“Maintenance Schedule”) for the first Calendar Year of this PPA. Thereafter, on or before every November 1<sup>st</sup> of a calendar year, Sellers shall submit an annual Maintenance Schedule for the next successive Calendar Year of this PPA. Sellers shall in addition furnish Buyer with reasonable advance notice of any change in the annual Maintenance Schedule

(B) Sellers shall not schedule any maintenance outages for the Facilities, excluding outages associated with Emergencies and Forced Outages, during any On-Peak Month without the prior written approval of Buyer, which shall not be unreasonably withheld.

(C) Not less than twelve (12) hours prior to commencement of any planned maintenance outage for a Facility previously scheduled by a Seller in accordance with this Section 9.1, Buyer may request, by phone, that the applicable Seller defer such scheduled maintenance. Subject to Good Utility Practice, the applicable Seller shall use commercially reasonable efforts to comply with any such request upon between the Parties.

9.2     Operation of Facilities. Sellers shall separately or collectively as agreed to by the parties, staff, control, operate and maintain the Facilities consistent at all times with Good Utility Practice. Personnel capable of starting, running, and stopping the Facilities shall be continuously available, either at the Facilities or capable of being at the Facilities on no more than sixty (60) minutes notice, and shall be continuously reachable by phone, e-mail, or pager.

9.3     Outage Reporting. Sellers shall comply with Good Utility Practice as it relates to generating unit outage reporting requirements, as they may be revised or changed over time. When Forced Outages occur, the Seller shall notify Buyer’s representative of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than fifteen (15) minutes after the Forced Outage occurs. The applicable Seller shall immediately inform Buyer’s representative of changes in the expected duration of the Forced Outage unless relieved of this obligation by Buyer’s representative for the duration of each Forced Outage.

9.4     Operating Committee and Operating Procedures. Buyer and Sellers shall each appoint one representative and one alternate representative to constitute an Operating Committee. Said committee shall periodically consult on

matters relating to the Parties' performance of obligations under this PPA, shall develop schedules for planned maintenance outages of the Facilities, and may consult on other operational matters as necessary or appropriate, including (without limitation) methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for applicable Buyer and Seller operating centers; clearances and switching practices; operating and maintenance schedule and reporting; unit operations log; reactive power support; and such other matters as may be mutually agreed upon by the Parties. The Operating Committee shall have no authority to modify the terms or conditions of this PPA.

9.5 Access to Facilities. Any designated representative(s) of Buyer shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to any of the Facilities to perform all inspections, maintenance, service, and operational review as may be appropriate to facilitate the performance of this PPA. While at a given Facility, such representative(s) shall observe such reasonable safety precautions as may be required by a Seller and shall conduct themselves in a matter that will not interfere with the operation of the Facility.

9.6 Reliability Standards. Sellers shall operate the Facilities in a manner that complies with Good Utility Practice and with any reliability standards adopted by any relevant agency of the Commonwealth of Virginia, the North American Electric Reliability Council, or other applicable agencies setting reliability standards for the operation of similar generation facilities.

## **Article 10. – Renewable Energy Credits**

10.1 Environmental and/or Renewable Energy Credits. The Parties acknowledge that future Federal and/or Commonwealth of Virginia legislation or regulation may create value in the ownership, use or allocation of Environmental and/or Renewable Energy Credits. Buyer and Seller will make arrangements to aggregate Renewable Energy Credits to include Seller and Buyer Renewable Energy Credits under a separate agreement.

## **Article 11 – Default and Remedies**

### **11.1 Events of Default of Seller.**

(A) Any of the following shall constitute an Event of Default of Seller(s) upon its occurrence and no cure period shall be applicable:

- (1) A Seller's corporate dissolution or liquidation;
- (2) A Seller's assignment of this PPA or any of its rights hereunder for the benefit of creditors (except as provided

under this PPA) without the express prior written consent of Buyer;

- (3) A Seller's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or a Seller voluntarily taking advantage of any such law or act by answer or otherwise;
- (4) The sale by a Seller to a third party, or diversion for any use, of Contract Energy committed to Buyer by the Seller under this PPA;
- (5) A Seller's actual fraud, waste, tampering with any Buyer-owned facilities or equipment, or any other material intentional misrepresentation or misconduct in connection with this PPA and/or the operation of any of the Facilities.

(B) Any of the following shall constitute an Event of Default of either Seller upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Buyer to the Seller:

- (1) Sellers' failure, after the twelfth (12<sup>th</sup>) full month following the effective date of this PPA, to collectively generate at least 10,000,000 kWh on a twelve-month rolling basis; unless such failure of performance is attributable to an Event of Force Majeure, and provided further, that the Event of Force Majeure contributing, in whole or in part, to such failure of performance is subject to the provisions of Section 13.2.
- (2) A Seller's Abandonment of a Facility or Facilities during the term of the PPA; and/or,
- (3) A Seller's failure to maintain in effect any necessary agreements or facilities to deliver the Contract Energy to the Point of Delivery pursuant to Section 5.1; and/or
- (4) A Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on the Buyer.

(C) Any of the following shall constitute an Event of Default of a Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Buyer to Seller(s):

- (1) A Seller's failure to make any payment required under this PPA;
- (2) A Seller's assignment of this PPA, or any direct or indirect change in control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Facilities (except as provided under this PPA);
- (3) The filing of a case in bankruptcy or any proceeding under any other insolvency law against either Seller as debtor or its

parent or any other Affiliate that could materially impact the Seller's ability to perform its obligations hereunder; provided, however, that the applicable Seller does not obtain a stay or dismissal of the filing within the cure period.

#### 11.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence and no cure period shall be applicable:

- (1) Buyer's assignment of this PPA or any of its rights hereunder for the benefit of creditors; and/or
- (2) Buyer's filing of a petition in bankruptcy under Chapter 9 of the Bankruptcy Code (applicable to municipal corporations).

(B) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Sellers, shall constitute an Event of Default of Buyer upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from the Sellers to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon its occurrence but shall be subject to cure with sixty (60) Days after the date of written notice from Sellers to Buyer:

- (1) Buyer's failure to make any undisputed payment due hereunder (net any outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA);
- (2) The filing of a case in bankruptcy or any proceeding under any insolvency law against Buyer that could materially impact Buyer's ability to perform its obligations hereunder; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period;
- (3) Buyer's assignment of this PPA, except as permitted in accordance with Article 18; and/or
- (4) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term is such cessation would reasonably be expected to result in a material adverse impact on Sellers.

11.3 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject to the limitation on damages set forth in section 11.5, the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this PPA as set forth below. Payment of any damages accruing prior to the cure of an Event of Default shall constitute a part of the cure.

(A) Actual Damages. For all Events of Default, the non-defaulting Party shall be entitled to receive from the defaulting Party all of the damages incurred by the non-defaulting Party in connection with such event of Default; provided, that if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 11.4.

11.4 Termination. Upon the occurrence of an Event of Default which has not been cured within the applicable cure period or the non-defaulting Party has not been compensated for said default, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this PPA shall terminate; provided, that this PPA shall automatically terminate upon the occurrence of any Event of Default listed in Section 11.1(A) or Section 11.2(A). Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this PPA. Upon the termination of this PPA under this Section 11.4, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the limitation on damages set forth in Section 11.5, all of the damages incurred by the non-defaulting Party in connection with such termination.

11.5 Limitation on Damages. Except as otherwise provided in this Section 11.5, Sellers' individual and aggregate financial liability to Buyer for Replacement Power Costs and other damages, shall not exceed \$115,000.00. If at any time during the Term of this PPA Buyer incurs undisputed damages in excess of the limitation set forth above which a Seller does not agree to pay when billed, Buyer shall have the right to termination of this PPA under Section 11.4. The limitations on damages set forth in this paragraph shall not apply to damages arising out of any of the following events:

- (A) Actual fraud, waste, tampering with Buyer-owned facilities, or the material intentional misrepresentation or misconduct sanctioned by, or at the direction of, Seller in connection with this PPA and/or the operation of any of the Facilities;
- (B) The sale by a Seller to a third party, or diversion for any use, of Contract Energy committed to Buyer under this PPA;
- (C) A Seller's failure to apply any insurance proceeds to the reconstruction of any of the Facilities following a casualty;
- (D) Any claim for indemnification under Article 16;
- (E) Any Environmental Contamination caused by either Seller; and/or
- (F) The filing of an involuntary bankruptcy petition against a Seller (other than by Buyer), which petition is not dismissed within sixty



(60) Days of its filing, or the filing of a voluntary petition in bankruptcy by the applicable Seller.

11.6 Specific Performance. In addition to the other remedies specified in this Article 11, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Buyer may elect to treat this PPA as being in full force and effect and Buyer shall have the right to specific performance. If the breach by a Seller arises from a failure by third party operating any of the Facilities pursuant to an operating agreement entered into with a Seller, and the applicable Seller fails or refuses to enforce its rights under the operating agreement which would result in the cure, or partial cure, of the Event of Default, Buyer's right to specific performance shall include the right to obtain an order compelling the applicable Seller to enforce its rights under the operating agreement.

11.7 Remedies Cumulative. Subject to the limitations on damages set forth in Section 11.5, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning on the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

11.8 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. No Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages recognized by statute or case law, in tort or contract (except to the extent expressly provided herein); provided, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages.

11.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA.

## **Article 12 – Contract Administration and Notices**

12.1 Notices in Writing. All notices request, consents or other communications required by this PPA shall be in writing and shall be delivered and/or transmitted to the other Parties at the addresses listed in Exhibit 1 hereto,

as said exhibit may be updated from time to time. If mailed, the notice, request, consent or other communication shall be simultaneously sent electronically by facsimile or e-mail. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand-delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning a Facility's operations shall be exempt from this Section.

12.2 Representatives for Notices. Each Party shall maintain a designated representative to receive notices, who shall be listed in Exhibit 1. Each Party may, by written notice to the other parties, change the representative or the address to which such notices and communications are to be sent.

12.3 Authority of Representatives. Each Party's representative designated pursuant to Section 9.4 shall have authority to act in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, a Party's representatives shall not have the authority to amend or modify any provision of this PPA.

12.4 Operating Records. Sellers and Buyer shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by state or federal authorities.

12.5 Dispute Resolution.

(A) The Parties agree that it is in the best interest of all parties to attempt to resolve any disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to using best efforts to resolve disputes informally. For all disputes that may arise, the parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution. Such negotiation shall commence no less than fourteen (14) Days after the date of any letter from one party representative to all parties notifying it of the nature of the dispute. In the event that the representatives cannot agree to a resolution within forty-five (45) Days after the commencement of negotiations, any Party may seek arbitration.

(B) Any controversy or claim arising out of or relating to the PPA, or the breach thereof, shall be subject to resolution by binding arbitration as set forth in this Section.

(C) Arbitration Procedures.

- (1) All disputes arising between the Parties which relate to the validity, interpretation or performance of this PPA, if not

informally resolved, shall be submitted to arbitration at the request of either party to the dispute, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and this PPA.

- (2) The demand for arbitration shall be filed in writing with the other Parties to this PPA and with the American Arbitration Association or other agreed upon arbitrator within ten days of the conclusion of discussions described in section 12.6(A).
- (3) The arbitrators shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of this PPA insofar as shall be necessary to the determination issues properly before the arbitrator(s), including the right to order specific performance of this PPA against any party. In making the decision, the arbitrators shall issue appropriate findings and conclusions regarding the issues. The arbitrators shall not have jurisdiction or authority to alter the provisions of this PPA or any applicable law or rule of civil procedure. The arbitrator(s) shall render a decision with sixty (60) days after the completion of the hearing on the matter.

(D) This Section 12.6 shall survive the termination of the PPA as necessary to resolve any disputes arising out of, in connection with, or relating to the PPA.

## **Article 13 – Force Majeure**

13.1 Definition of Force Majeure. The term “Force Majeure”, as used in this PPA, means causes or events beyond the reasonably control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, an Emergency, acts of god, sudden actions of the elements such as drought, floods, earthquakes, hurricanes, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by a Seller; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act, prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority. The term Force Majeure does not include any full or partial curtailment in the electrical output of any of the Facilities that is caused by or arises from the acts or omissions of any third party, including, without limitation, any vendor, customer, or supplier of a Seller, unless such acts or omissions are themselves excused by reason of Force Majeure.

The term Force Majeure does not include any full or partial curtailment in the electric output of the Facilities that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of god; sudden actions of the elements, including, but not limited to drought, floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Authority. The term Force Majeure does not include changes in market conditions that affect the cost of alternative supplies of energy, or that affect demand or price for any of Sellers' products.

### 13.2 Applicability of Force Majeure.

(A) No Party shall be responsible or liable for any delay or failure in its performance under this PPA, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, or occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- (1) The non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (2) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (3) The non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing actions taken to end the Force Majeure;
- (4) When the non-performing Party is able to resume performance of its obligations under this PPA, such Party shall give the other Parties to this PPA written notice to that effect.

(B) Except as otherwise expressly provided for in this PPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this PPA (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

13.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this PPA beyond its stated Term.

## **Article 14 – Representations, Warranties and Covenants**

14.1 Seller Representations, Warranties and Covenants. Sellers hereby individually and collectively represent and warrant as follows:

(A) Seller **Coleman Falls Company** is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Seller **Coleman Falls Company** has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) Seller **Holcomb Rock Company** is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Seller **Holcomb Rock Company** has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(C) The execution, delivery, and performance of its obligations under this PPA by Sellers have been duly authorized by all necessary corporate actions, and do not and will not:

- (1) Require any consent or approval by any governing body of either Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Buyer upon its request);
- (2) Violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to either Seller or violate any provision in any formation documents of either Seller, the violation of which could have a material adverse effect on the ability of either Seller to perform its obligations under this PPA;
- (3) Result in a breach or constitute a default under either Seller's formation documents or bylaws, or under any agreement related to the management or affairs of either Seller's or any other agreement, lease, or instrument to which either Seller is a party or by which its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of either Seller to perform its obligations under this PPA; or
- (4) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of either Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of either Seller to perform its obligations under this PPA.

(D) This PPA is a valid and binding obligation on each Seller.

(E) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which either Seller is a party or any judgment, order, statute, or regulation that is applicable to either Seller or any Facility.

(F) To the best knowledge of Sellers, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Sellers' individual and collective execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(G) Sellers shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including but not limited to equal opportunity and affirmative action requirements and all applicable federal state and local environmental laws and regulations presently in effect or which may be enacted during the Term of this PPA.

(H) Sellers shall independently disclose to Buyer, to the extent that, and as soon as it is individually known to Seller, any violation of any environmental laws or regulations arising out of the operation of either of the Facilities, or the presence of Environmental Contamination at either Facility, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding related to such alleged violation or alleged presence of Environmental Contamination. Sellers shall also promptly disclose to Buyer the initiation of any investigation or enforcement action by FERC relating to the Facilities, or any FERC proceeding to "reopen" or amend the license or exemption of the Facilities under the Federal power Act.

14.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer **City of Bedford** is a municipal corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary regulatory and/or governmental actions, including approval by the Bedford City Council, and do not and will not:

- (1) Require any consent or approval other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);
- (2) Violate any provision of law, rule, regulation, order writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Buyer or violate any

provision in any municipal charter or other organizational documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

- (3) Result in a breach or constitute a default under Buyer's municipal charter or codes, or under any agreement relating to the management or affairs of Buyer, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or
- (4) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expanded to have a material adverse effect on the ability of Buyer to perform its obligation under this PPA.

(C) This PPA is a valid and binding obligation of Buyer.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the best knowledge of Buyer, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

## **Article 15 – Insurance**

15.1 Insurance Policies. Sellers shall procure, and shall maintain during the Term of this PPA, property, casualty and liability insurance policies covering each of the Sellers' Facilities consistent with industry standards and Good Utility Practice.

## **Article 16 – Indemnity**

### 16.1 Mutual Indemnification

(A) Each Seller (the “Indemnifying Seller”) agrees to indemnify, defend and hold harmless Buyer (the “Indemnified Buyer”) from and against all claims, demands, losses, liability, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to persons and damage to the Indemnified Buyer’s real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default under this PPA, violation of any applicable environmental laws, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Seller, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Section 16(A) is not limited by the limitation on damages set forth in Section 11.5

(B) Buyer (the “Indemnifying Buyer”) agrees to indemnify, defend and hold harmless either or both Sellers (the “Indemnified Sellers”) from and against all claims, demands, losses, liability, penalties, and expenses (including reasonably attorneys’ fees) for personal injury or death to persons and damage to an Indemnified Seller’s real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default under this PPA or by the negligent or tortious acts, errors, or omissions of the Indemnifying Buyer, its governing body, its officers, employees, or agents. The indemnification of third party claims provided under this Section 16(B) is not limited by the limitation on damages set forth in Section 11.5, but is subject to any applicable limitations on liability of municipal corporations under the Constitution or statutes of the Commonwealth of Virginia.

(C) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified party shall assume the defense thereof with counsel designated by such party and satisfactory to the indemnified party, provided, however, that if the defendants in any such action include both the Indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying party, the indemnified party shall have the right to select and be represented by separate counsel, at the Indemnifying party’s expense, unless a liability insurer is willing to pay such costs.

## **Article 17 – Legal and Regulatory Compliance**

### **17.1 Compliance with Applicable Laws and Regulations**

(A) Each Party shall at all times comply with all applicable laws, ordinances, rules, licenses, permits, and regulations that pertain to the Party’s performance under this PPA. As applicable, each Party shall give all required



notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall deliver or cause to be delivered to the other Parties certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to any Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including, but not limited to, administrative proceedings before any governmental regulatory commission.

## **Article 18 – Assignment and Other Transfer Restrictions**

18.1 No Assignment Without Consent. Except as permitted in this Article 18, no Seller shall assign this PPA or any portion thereof, without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed; provided (i) that at least thirty (30) Days prior notice of any such assignment shall be given to Buyer; (ii) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by Buyer, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless Buyer agrees in writing in advance to waive the assignor's continuing obligations pursuant to this PPA; (iii) no such assignment shall impair any security given by a Seller hereunder; and (iv) before the PPA is assigned by a Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

(A) The consent of either Seller shall not be required for Buyer to assign this PPA to an affiliated governmental entity, or to a governmental joint powers authority of which Buyer is a member, provided that Buyer provides assurances and executes documents reasonably required by either Seller regarding Buyer's continued liability for all of Buyer's obligations under this PPA in the event of any nonperformance on the part of such assignee.

(B) Buyer's explicit written consent shall be required for either Seller to assign this PPA for collateral purposes.

18.2 Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of the PPA shall be null and void and shall constitute an Event of Default pursuant to Article 11.

18.3 Subcontracting. Sellers may individually or collectively subcontract its duties or obligations under this PPA without the prior written consent of Buyer,

provided, that no such subcontract shall relieve either Seller of any of its duties or obligations hereunder.

## **Article 19 – Miscellaneous**

19.1 Waiver. The failure of any party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

19.2 Taxes. Each Seller shall individually and solely be responsible for any and all present or future taxes relating to the ownership, leasing, operation or maintenance of the Seller's Facilities under this PPA, or any components or appurtenances thereof, and all ad valorem taxes relating to the Facility.

19.3 Fines and Penalties. Each Seller and Buyer shall pay when due all fees, fines penalties or costs that it or its agents, employees, or contractors incur for noncompliance with any provision of this PPA, or any contractual obligation, permit, license, or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by a Seller or Buyer and for which adequate financial reserves have been set aside to pay such fines, penalties, or costs in the event of an adverse determination.

### 19.4 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between any of the Parties nor to impose any partnership obligation or liability upon any Party. Except as specifically provided for, no Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Parties.

(B) Sellers shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutory mandated workers' compensation coverage. None of the persons employed by a Seller shall be considered employees of Buyer for any purpose; nor shall any Seller represent to any person that he or she is or shall become a Buyer employee.

19.5 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable Statue of Limitations, including without limitation

warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

19.6 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected there by shall remain in force and effect.

19.7 Complete Agreement: Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and the Sellers with respect to the Facilities and shall supersede all previous communications, representations, or agreements, either verbal or written, between Buyer and Sellers with respect to the sale of electric capacity and energy from the Facilities. This PPA, including any Exhibit(s) hereto, may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by each Party hereto.

19.8 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and insure to the benefit of the Parties hereto and their respective successors-in-interest, legal representation, and assigns permitted hereunder.

19.9 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

19.10 Counterparts. This PPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

19.11 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. The Parties hereby submit to the exclusive jurisdiction of the courts of the County of Bedford, Virginia, to resolve any dispute not amenable to resolution under the Dispute Resolution procedures specified in Section 12.6 hereof.

IN WITNESS WHEREOF, the Parties have executed this PPA.

**SELLERS:**

**HOLCOMB ROCK COMPANY**, A Virginia Corporation

By: \_\_\_\_\_  
Mark Fendig, [Title]

\_\_\_\_\_  
Date

**COLEMAN FALLS COMPANY**, A Virginia Corporation

By: \_\_\_\_\_  
Mark Fendig, [Title]

\_\_\_\_\_  
Date

**BUYER:**

**THE CITY OF BEDFORD, VIRGINIA**, a Municipal Corporation

By: \_\_\_\_\_  
[Name/Title]

\_\_\_\_\_  
Date

## **EXHIBIT 1**

### **PARTIES' DESIGNATED REPRESENTATIVES AND CONTACT INFORMATION**

#### **A. For Seller HOLCOMB ROCK COMPANY:**

Designated Representative: Mark Fendig  
Mail address: 4839 Holcomb Rock Road,  
Lynchburg, VA 24503  
Phone: 434-386-6050  
FAX: 434-386-0007  
E-mail address: [mfendig@aisva.net](mailto:mfendig@aisva.net)

#### **B. For Seller COLEMAN FALLS COMPANY:**

(All information same as for Holcomb Rock Co.)

#### **C. For Buyer CITY OF BEDFORD, VIRGINIA**

Designated Representative: Gene Ratzlaff, Director, Electric Dept.  
Mail address: 215 E. Main St.  
P.O. Drawer 807  
Bedford, VA 24523  
Phone: 540-587-6071  
FAX: 540-586-7177  
E-mail address: [gratzlaff@bedfordva.gov](mailto:gratzlaff@bedfordva.gov)